TESTIMONY TO THE EDUCATION COMMITTEE IN OPPOSITION TO SENATE BILL 1142 (RAISED) March 22, 2009

Submitted by Roger E. Bunker, Esq. and Judith S. Bunker, Surrogate Parent, of Bloomfield, CT

As parents of a child with a specific learning disability and as professionals with over 40 years teaching and representing children with educational disabilities, we urge the rejection of Sections, 1, 4 and 5 of Senate Bill (Raised) 1142. As background, Roger is an attorney with 14 years of experience representing children and parents in special education matters, including due process. Many, if not most of these representations have been on a *pro bono* or reduced rate basis as most families are unable to pay the full costs of representation. For over 30 years, Judith have been a teacher of children with severe special educational needs for CREC and, most recently as an advocate for them in obtaining the special education services they need. She currently is appointed by the State Department of Education (SDE) as a Surrogate Parent to represent children with special educational needs, who are in the care of the State Department of Children and Families.

Section 4 of this Bill is our primary concern as it places the "burden of proof" as to all of the issues in dispute on the party requesting the hearing. Most frequently the party requesting the hearing is a parent seeking an appropriate educational plan and placement for the child. Currently, with one exception, this burden is placed on the party seeking the hearing. The one exception, as stated in State Board of Education Regulations Section 10-76h-14(a) is that "the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency." Thus, this burden does not constitute a new mandate, and adoption of this Section would overturn settled Connecticut policy on this matter. Neither does it place a new or additional cost on schools. As discussed below, they already have the staff, records, skills, training, and other resources to bear this burden whereas the parents do not. Therefore, a school is in a better position than parents to show the appropriateness of its program and placement than a parent is to show the inappropriateness. It is noteworthy that the SDE's pending revisions to these regulations, do not include changing this burden. According to the SDE's statistics, under the present regulations, schools win 67%% of due process decisions and parent less than 30%, with the balance split decisions. In our experience many parents are unable to pursue meritorious claims because they lack the financial means to do so. Unfairly imposing the burden of proving the inappropriateness of the schools' program and placement will further handicap them.

The other primary reason that Connecticut has placed the burden of proof on the appropriateness of the school's program and placement on the schools is that, as stated in the federal individuals with Disabilites Education Act (IDEA), it is the responsibility of the schools to provide students with a free appropriate education. A school's staff contains the trained teachers, administrators and other professionals (psychologists, social workers, physical, occupational, speech and language therapists, reading consultants, etc.) who are experienced in assessing students' needs and designing and implementing educational plans to address those needs. Moreover, schools control the education

records, administer and run the planning meetings, and prepare the documentation of what is discussed and decided at the meetings. In theory, under IDEA, parents are equal participants in decision-making, have the rights to access to all records and to obtain independent assessments of their children. Unfortunately, the reality is that most parents, some of whom we have assisted, are unaware of these rights and are ill-prepared to exercise them. In addition, at meetings where they are vastly outnumbered by school staff who often speak in acronyms and phrases that parents do not understand, they are intimidated and confused. This imbalance of knowledge, education, status and power is especially unfair to undereducated parents and most parents who lack the means to hire the expertise needed to understand the schools' assessments and to determine whether or not the schools' proposed programs and placements are appropriate. Such expenses are not reimbursable even if the parents win on all the issues presented at a due process hearing. On the other hand, the schools already have the experts on their payroll and have the resources to confront parents with skilled attorneys at hearings, which makes the process even more unequal..

Section 1 seeks to further delay the implementation of the Subsection (fg) of section 10-233c of Connecticut General Statutes, which limits out-of-school suspensions to situations where the school administration determines that the student presents a risk of danger to persons or property or a disruption of the educational process. All other suspensions are to be served in-school so that the student continues to be in an educational setting and available to learning. The merits of this statute are well known to the Committee. To further delay its implementation would be to continue to fail to provide these children with educational opportunities. With regard to students with special educational needs, who are often frustrated when not taught in a manner by which they can learn, and sometimes become disruptive, it is our experience that some schools choose to suspend students rather than address their individual educational needs. Also, as these students often do not wish to attend school, after years of not learning, out-of-school suspension is seen more as a reward for improper behavior than as a meaningful corrective punishment. Another concern is that school districts with high minority student populations resort to out-of-school suspension more than other districts. This contributes to the educational performance gap between minority and other students.

Section 5 seeks to terminate special education services to students, who have not graduated from high school, on the day they turn 21, rather than in the school year in which they turn 21. Current law requires the provision of these services until the end of the school year in which a student turns 21. Current law is neither a new mandate nor a new cost. The schools have had this responsibility for years. The change would deprive students of the opportunity to receive services to complete the educational program for the year.

In view of the above, we urge the Committee to reject Sections 1, 4 and 5 of Senate Bill 1142 (Raised).

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